

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment to Section 73.202(b),)	MM Docket No. 98-155
Table of Allotments,)	RM-9082
FM Broadcast Stations,)	RM-9133
(Alva, Mooreland, Tishomingo, Tuttle,)	
and Woodward, Oklahoma))	

To: The Chief, Allocations Branch

REPLY COMMENTS OF FM 92 BROADCASTERS, INC.

FM 92 Broadcasters, Inc. ("FM 92"), by its undersigned counsel, hereby respectfully submits Reply Comments in the above-referenced proceeding. This Reply is addressed to the "Response to Order to Show Cause and Comments of Classic Communications, Inc." (hereinafter, "Classic"), the "Comments of Ralph Tyler" (hereinafter "Tyler") and Supplement to Comments of Ralph Tyler and the "Response to Order to Show Cause" filed by Chisholm Trail Broadcasting Co., Inc. (hereinafter "Chisholm").

1. This proceeding involves two interrelated petitions for rulemaking, the first filed by FM 92, Inc. requesting the substitution of Channel 228A for Channel 261C1 at Woodward, Oklahoma and the allotment of Channel 261C1 to Mooreland, Oklahoma and the second filed by Tyler requesting the reallocation of Channel 259C3 from Tishomingo to Tuttle, Oklahoma, the substitution of Channel 292C1 for Channel 261C1 at Woodward to accommodate the Tuttle proposal, and the substitution of Channel 260C1 for Channel 259C1 at Alva, Oklahoma.

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2. After evaluating the two petitions and the comments filed in response thereto, the Commission's staff released its August 28, 1998 Notice of Proposed Rulemaking and Orders to Show Cause ("NPRM") which seeks comments on two Options.

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
<u>Option I</u>		
Alva, Oklahoma	259C1, 278C1, 289C2	260C1, 278C1, 289C2
Mooreland, Oklahoma	---	283C1
Tishomingo, Oklahoma	259C3	---
Tuttle, Oklahoma	---	259C3
Woodward, Oklahoma	240A, 261C1, 266C, 272A	240A, 266C, 272A, 292C1

<u>Option II</u>		
Alva, Oklahoma	259C1, 278C1, 289C2	260C1, 278C1, 289C2
Mooreland, Oklahoma	---	283C1
Tishomingo, Oklahoma	259C3	---
Tuttle, Oklahoma	---	259C3
Woodward, Oklahoma	240A, 261C1, 266C, 272A	228A, 240A, 266C, 272A

However, the Options listed by the FCC inadvertently left out Channel 221C3, occupied by FM 92's Station KMZE(FM) at Woodward, Oklahoma, and therefore, as demonstrated in the Engineering Statement attached to FM 92's Comments, the Commission's Options must be corrected to include Channel 221C3 at Woodward.

3. Both of the Options included in the NPRM propose the allotment of Channel 283C1 to Mooreland, Oklahoma. In addition, both Options propose the allotment of Channel 259C3 to Tuttle, Oklahoma and the allotment of Channels 260C1, 278C1 and 289C2 to Alva, Oklahoma. The difference in the Options is that Option I proposes to substitute Channel 292C1 for Channel 261C1 at Woodward, Oklahoma and modify the license of KWFX(FM) accordingly,

whereas Option II proposes to substitute Channel 228A for Channel 261C1 at Woodward, Oklahoma and modify the license of KWFX(FM) to Channel 228 -- the channel on which it has continued to operate since September 1994 when it requested that its permit for Channel 261C1 be cancelled.^{1/} The NPRM ordered Classic, the licensee of Station KWFX(FM), to show cause why its license should not be modified to specify operation on Channel 292C1 or Channel 228A. Chisholm Trail Broadcasting Co., Inc. was ordered to show cause why its license should not be modified from Channel 259C1 to Channel 260C1.

4. In its Response to the NPRM, Classic claims that its station can be authorized to broadcast at a higher power on Channel 292C1 than on Channel 228A. Consequently, Classic states that it objects to Option II and "does not object to Option I so long as Ralph Tyler and/or FM 92 Broadcasters, Inc. reimburse Classic Communications, Inc. for the reasonable and prudent expenses relating to the change in power and the change of channel...." (Response, pp.1-2). However, Classic is wrong in its analysis of Option II. In fact, as demonstrated by the Engineering Statement of Jack Sellmeyer, attached to FM 92's Comments filed October 19, 1998, Channel 228A may be assigned to Woodward as a Class A, C3 or C2 at the existing KWFX site and may also be assigned to Woodward as a Class C1 with a small site restriction.

5. In view of the past behavior of KWFX, the Commission should adopt Option II. Despite the fact that KWFX has had many years to improve its facility to a Class C1 on Channel 261, it has not done so. The application Classic now has pending at the FCC proposes to operate KWFX on Channel 261 as a 6 kilowatt Class A station. On August 11, 1997, when it belatedly

^{1/} It should be noted that at one time KWFX's operation on Channel 228A was short-spaced to Station KIMY, Channel 228A at Watonga, Oklahoma. However, this short-spacing was eliminated pursuant to DA95-175.

filed an application to move to Channel 261, Classic stated as follows:

Classic is currently making plans to upgrade its equipment. Classic is planning to submit an application for permission to move the KWFX antenna and transmitter to a new location and to request an increase in ERP to 25 kW as soon as a new location becomes available and as soon as finances allow. (Emphasis added). (See Attachment A hereto).

Classic has not taken any steps to improve its facility since that application was filed. It is evident that Classic does not have the finances to improve its facility because Classic could operate on Channel 261C2 from its current site or on Channel 228C2 from its current site. Thus, Classic has failed to demonstrate why its license should not be modified to Channel 228A pursuant to Option II.

6. Classic merely states that it “does not object” to Option I. This is not an unequivocal pledge to apply for Channel 292C1. Significantly, the FCC’s database reflects that KWFX could only operate on Channel 292C1 from a site 12.2 kilometers southwest of Woodward. It appears that the present KWFX site is too close to the Woodward airport to support a tower capable of supporting Channel 292C1. Classic has not committed to making a site change and it is well established that the Commission generally refrains from requiring a transmitter site change by an unwilling licensee. See FM Channel Assignments, 67 RR2d 176 (M. Med. Bur. 1989). FM Channel Assignments, 66 RR2d 225 (M. Med. Bur. 1989) and FM Channel Assignments, 64 RR2d 1714 (M. Med. Bur. 1988). As the Commission is fully aware, there are numerous instances where channel reallocations are delayed because the licensee who must move its channel fails to take necessary actions. There is a real danger that this situation could develop in this case since Classic must advance the funds it needs for the necessary site change, and Classic has not pledged to make any changes unless “finances allow.” In the event

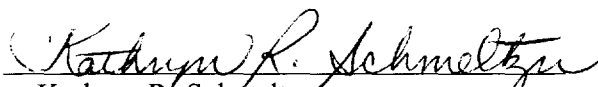
that 292C1 were to be allotted, despite Classic's lack of a clear commitment to change channels, the Commission should determine (a) whether KWFX is entitled to any reimbursement in light of its relinquishment of the Channel 261C1 construction permit and (b) whether Tyler, the proponent of the Channel 292C1 proposal should be solely responsible for Classic's reimbursable expenses. FM 92 is willing to share in the reimbursement to Classic of its reasonable and prudent expenses related to the change of channel should the Commission determine that such shared responsibility is warranted.

7. FM 92 submits that Chisholm's arguments have been fully addressed in Tyler's Comments and Supplemental Comments, and therefore the reallocation of Channel 259C3 from Tishomingo to Tuttle, as requested by Tyler, can be accomplished. As FM 92 has noted in its Comments, Tyler, the proponent of the Tishomingo/Tuttle channel change should be responsible for reimbursing Chisholm.

In the event that either Option I or Option II are adopted, FM92 will proceed to file the appropriate application to build its proposed facility and will promptly construct the facility if awarded the construction permit. FM 92 Broadcasters, Inc. continues to urge the Commission to adopt the NPRM's Option 2 proposal.

Respectfully submitted,

FM 92 BROADCASTERS, INC.

By: 
Kathryn R. Schmeltzer
Veronica D. McLaughlin
Its Attorneys

FISHER WAYLAND COOPER
LEADER & ZARAGOZA L.L.P.
2001 Pennsylvania Ave., N.W., Suite 400
Washington, D.C. 20006
(202) 659-3494

Dated: November 3, 1998

ATTACHMENT A

LAW OFFICES

F. JOSEPH BRINIG

1427 DOLLEY MADISON BOULEVARD

MCLEAN, VIRGINIA 22101

(ALSO ADMITTED IN DC & MD)

(703) 893-6616

FAX (703) 893-4057

August 11, 1997

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: KWFX (FM)
Woodward, Oklahoma

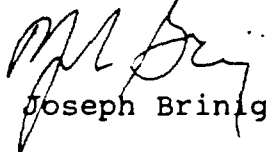
Dear Mr. Caton:

On behalf of Classic Communications, Inc., licensee of KWFX(FM), Woodward, Oklahoma, please find attached a minor change application for use of Channel 261 for the facility.

Attached also please find a check in the amount of \$690.00 as the filing fee for this application.

Should questions arise pursuant to this filing, please contact my office.

Respectfully submitted,


F. Joseph Brinig

Attachments

cc: Kathryn R. Schmeltzer, Esq.
Public File

FOR
FCC
USE
ONLY

FCC 301

APPLICATION FOR CONSTRUCTION PERMIT FOR COMMERCIAL BROADCAST STATION

FOR COMMISSION USE ONLY

FILE NO. 514/ 176 112

Section 1. GENERAL INFORMATION

1. APPLICANT NAME (Last, First, Middle Initial)

Classic Communications, Inc.

MAILING ADDRESS (Line 1) (Maximum 35 characters)

P. O. Box 1600

MAILING ADDRESS (Line 2) (Maximum 35 characters)

CITY

Woodward

STATE OR COUNTRY (if foreign address)

OK

ZIP CODE

73802

TELEPHONE NUMBER (include area code)

(405) 254-9103

CALL LETTERS

KWEX

OTHER FCC IDENTIFIER (IF APPLICABLE)

2. A. Is a fee submitted with this application?



Yes



No

B. If No, indicate reason for fee exemption (see 47 C.F.R. Section 1.1113) and go to Question 3.



Governmental Entity



Noncommercial educational licensee



Other (Please explain):

C. If Yes, provide the following information:

Enter in Column (A) the correct Fee Type Code for the service you are applying for. Fee Type Codes may be found in the "Mass Media Services Fee Filing Guide." Column (B) lists the Fee Multiple applicable for this application. Enter in Column (C) the result obtained from multiplying the value of the Fee Type Code in Column (A) by the number listed in Column (B).

	(A) FEE TYPE CODE	(B) FEE MULTIPLE (if required)	(C) FEE DUE FOR FEE TYPE CODE IN COLUMN (A)	FOR FCC USE ONLY
(1)	M P R		\$ 690.00	

To be used only when you are requesting concurrent actions which result in a requirement to list more than one Fee Type Code.

	(A)	(B)	(C)	FOR FCC USE ONLY
(2)			\$	

ADD ALL AMOUNTS SHOWN IN COLUMN C, LINES (1) THROUGH (2), AND ENTER THE TOTAL HERE. THIS AMOUNT SHOULD EQUAL YOUR ENCLOSED REMITTANCE.

TOTAL AMOUNT
REMITTED WITH THIS
APPLICATION

\$ 690.00

FOR FCC USE ONLY

Section I - GENERAL INFORMATION (Page 2)

3. This application is for: (check one box)

☐ AM

☒ FM

☐ TV

(a) Channel No. or Frequency

See Note 1 below

(b) Principal
Community

Woodward

City

State

OK

(c) Check one of the following boxes:

☐ Application for NEW station

☐ MAJOR change in licensed facilities; call sign: _____

☒ MINOR change in licensed facilities; call sign: _____

KWFX - FM

☐ MAJOR modification of construction permit; call sign: _____

File No. of construction permit; call sign: _____

☐ MINOR modification of construction permit; call sign: _____

File No. of construction permit; call sign: _____

☐ AMENDMENT to pending application: Application File Number: _____

NOTE: It is not necessary to use this form to amend a previously filed application. Should you do so, however, please submit only Section I and those other portions of the form that contain the amended information.

4. Is this application mutually exclusive with a renewal application? See Note 2 below.

☐ Yes ☒ No

If Yes, state:

Call letters	Community of License	
	City	State

Note 1:

KWFX - FM is currently operating on Channel 228A (93.5 Mhz) but should be operating on Channel 261 C1 (100.1 Mhz). This application is filed to request permission to change from operating on Channel 228A to operate on Channel 261 C1. See Exhibit No. 1 attached.

Note 2:

The license renewal of KWFX - FM is currently in a "pending" status subject to the resolution of what frequency KWFX - FM will be permitted on.

EXHIBIT NO. 1

Fuchs Communications, Incorporated (Fuchs) was the licensee of KWFX-FM located in Woodward, Oklahoma prior to March 7, 1996. During the period that Fuchs held said license, Fuchs was granted a construction permit which included the modification of the KWFX license to specify operation on Channel 261 C1 instead of Channel 228A(MM Docket No. 90-286). The construction permit granted to Fuchs was canceled at the request of Fuchs on September 2, 1994 (File No.BMPH-940422JC and File No.BPH-911220IE). Fuchs, under the impression that KWFX was still licensed to operate on Channel 228A, did not change the frequency to Channel 261 C1 and continued to operate on Channel 228A.

On November 20, 1995, Fuchs filed an application for approval of the assignment of the KWFX license to Classic Communications, Inc. (Classic).

On March 7, 1996, the FCC approved the assignment of the KWFX license to Classic (File No. BAPLH-951128GJ) and Classic continued to operate on Channel 228A at an ERP of 3KW as Fuchs had previously done. Around July 18, 1996, Classic was informally notified that KWFX was licensed for Channel 261 and not for Channel 228 and that it should take steps to prepare to operate on Channel 261. Because the KWFX antenna was not capable of being tuned to operate on Channel 261, Classic began trying to locate and purchase an affordable antenna which would operate on Channel 261. On June 19, 1997, Classic completed the purchase of a used 3-bay antenna which is capable of broadcasting on Channel 261. Classic is now

requesting permission to operate KWFX on Channel 261 as provided by its current license and to replace the antenna currently being used to broadcast on Channel 228 with the recently purchased 3-bay antenna capable of broadcasting on Channel 261. All facilities would remain in their present location.

Classic also requests permission to broadcast on Channel 261 at an ERP of 6 KW.

Classic is currently making plans to upgrade its equipment. Classic is planning to submit an application for permission to move the KWFX antenna and transmitter to a new location and to request an increase in ERP to 25 KW as soon as a new location becomes available and as soon as finances allow.

CERTIFICATE OF SERVICE

I, Margie S. Chew, hereby certify that I have on this 3rd day November 1998 caused a copy of the following **"REPLY COMMENTS OF FM 92 BROADCASTERS, INC."** to be served by first class U.S. mail, postage prepaid, upon the following:

*John A. Karousos, Chief
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W. - Room 554
Washington, D.C. 20554

Gary S. Smithwick, Esq.
James K. Edmundson, Jr., Esq.
Smithwick & Belendiuk, P.C.
1990 M Street, N.W.
Suite 510
Washington, D.C. 20036
(Counsel to Ralph Tyler)

Ms. Sherre D. House
President
Classic Communications, Inc.
P.O. Box 1600
Woodward, OK 73802

F. Joseph Brinig, Esq.
1427 Dolley Madison Blvd.
McLean, VA 22101

Andrew S. Kersting, Esq.
Fletcher Heald & Hildreth, P.L.C.
1300 North 17th Street
11th Floor
Rosslyn, VA 22209-3801
(Counsel for Chisholm Trail Broadcasting Co., Inc.)

Margie S. Chew

*HAND-DELIVERY